Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

IN RE: CONDEMNATION BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF ALLENTOWN OF 235 NORTH FIFTH STREET, CITY OF ALLENTOWN, LEHIGH COUNTY, PENNSYLVANIA, JOE LARRY THORPE (CONDEMNEE), LINDA D. THORPE (CONDEMNEE),

JOE L. THORPE AND LINDA D. THORPE,

Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

As presented in this brief, the Pennsylvania courts have misinterpreted Supreme Court cases in establishing eminent domain guidelines and providing owners of property due process prior to the property's condemnation and destruction by local officials. By not giving the Petitioners opportunity to conduct discovery and obtain concrete evidence regarding the Authority's, City's and Hospital's plans undercuts the Petitioners' constitutional right of due process. By not giving the Petitioners' opportunity to defend their property interests as the "owner of record", local officials devalued the Petitioners' interest in the property and violated the "owners" due process clause of the United States Constitution. If this Honorable Court denies this writ for certiorari, then the Pennsylvania's Supreme Court's opinion is upheld, proper due process in protecting a person's property interest has been diminished.

The Petitioners' case should have never been dismissed since they were denied the opportunity to pursue their case before a jury. However, the state courts failed to give the Petitioners the opportunity to perform discovery, because they allege that that the statute mandated a quick resolution of the eminent domain. Such an interpretation is a violation of the Petitioners' constitutional rights.

I. Whether The Pennsylvania Supreme Court Erred In Denying The Petitioners' Preliminary Objections And Allowing The Taking Of The Petitioners' Property Because The State Courts Weighed Imminent Taking Of The Property Over The Petitioners' Right Of A Jury Trial And Due Process In Violation Of The United States Constitution?

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The decision of the Supreme Court of Pennsylvania dated August 30, 2000 is set forth in the Appendix, p. 1a. The opinion of the Court of Common Pleas of Lehigh County, Pennsylvania dated June 1, 1999 is set forth in the Appendix, p. 2a-33a. The order of the Commonwealth Court of Pennsylvania dated December 21, 1999 is set forth in the Appendix, p. 34a.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statutory provision for this Court's jurisdiction is 28 U.S.C. Section 1254. The Supreme Court of Pennsylvania denied the Petitioner's Petition for Allowance of Appeal on August 30, 2000. This Petition was timely filed within the appeal period.

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED IN THIS CASE

CONSTITUTIONAL PROVISIONS

Seventh Amendment, United States Constitution:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and not fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

Fourteenth Amendment, United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATE LAW

Eminent Domain Code – 26 P.S. Section 1-406

> ...(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title.

STATEMENT OF THE CASE

Joe L. Thorpe and Linda D. Thorpe, the Petitioners, were served a Declaration of Taking of Property by the Redevelopment Authority of the City of Allentown, Pennsylvania, the "Authority", on January 28, 1999.

The purpose of the taking must be explained. In 1973, the Scared Heart Hospital (the "Hospital") a Roman Catholic Hospital, wanted to expand its facilities. In 1995, the City of Allentown, (the "City"), obtained a federal grant, and later a state grant, to allow the Hospital to build a facility on the land that the Hospital had purchased and also to buy remaining properties in the area, including the Petitioners' property.[1] Commencing in 1996, the Hospital threatened the Petitioners that they would seek eminent domain from the City if the Petitioners did not sell their property at a price much lower than offers given to neighboring properties. In July of 1997, the Hospital asked the Authority to take the Petitioners' property by eminent domain, since the Petitioners failed to agree to the devalued price the Authority refused. In November of 1997, after Petitioners refused to pay extortion to the Hospital's agent., the Hospital agreed in writing to pay the Authority $300,000.00 to take the Petitioners' property. As a result, several months later in February, 1998, the City condemned Petitioners property and 79

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1 It is important to note that the federal and state grants were obtained by fraudulent misrepresentations and were under criminal investigation by the federal government prior to filing of the taking by the Authority.

acres of land surrounding the Petitioners' property based on minor code violations. The only plan approved by the City was to remove the Petitioners' building.

In March of 1999, the Hospital completed a new building on the land adjacent to the Petitioners' property. The Hospital and the City agreed by city ordinance to let the Petitioners' building alone because it was not needed for the project. In a scheme to defraud Petitioners, they changed their minds and sued for the Petitioners' property for alleged parking usage, even though they certified to the federal and state grant agencies that there was already sufficient parking for the Church Hospital.

As a result, on January 28, 1999 the Authority filed a notice of taking of Petitioners' property. On February 19, 1999, the Petitioners filed Preliminary Objections which were denied by the Court of Common Pleas.

The Petitioners' preliminary objections, and their rejection by the state courts, are the basis of this Petition for Writ of *Certiorari*.

ARGUMENT

I. THE PENNSYLVANIA SUPREME COURT ERRED IN DENYING THE PETITIONERS' PRELIMINARY OBJECTIONS AND ALLOWING THE TAKING OF THE PETITIONERS' PROPERTY BECAUSE THE STATE COURTS WEIGHED IMMINENT TAKING OF THE PROPERTY OVER THE PETITIONERS' RIGHT OF A JURY TRIAL AND DUE PROCESS IN VIOLATION OF THE UNITED STATES CONSTITUTION?

A. The Statute As Applied Per Se Is Unconstitutional Since It Violates The Petitioners' Due Process Rights.

Record owners of property are vested with property interests entitled to the procedural safeguards of due process. Failure to provide those owners with adequate notice and an opportunity to be heard renders the statutory scheme unconstitutional. The Petitioners' claim should have never been dismissed since the statute did not safeguard the Petitioners' property interests. The courts were more concerned with the definition of the word "promptly" in the eminent domain statute than seeking the true legislative intent. If promptly meant to disregard the owner's interest, the statute is unconstitutional. But, if promptly means the owner of the property has had the opportunity to conduct discovery and protect their interests, the state courts violated the Petitioners' constitutional rights.

A cornerstone of any meaningful regime of private property is the recognition that the right to use property is an inherent attribute of ownership. *See, e.g., Robert Nozick: Anarchy, State and Utopia 171* (1974) ("the central core of the notion of a property right ... is the right to determine what shall be done with it"); *United States v. Causby*, 328 U.S. 256, 261 (1946). But the Pennsylvania courts have infringed upon that right since they took away the Petitioners' property in less than three months without giving them the opportunity to defend their interests. The state statute did not give any protection to Petitioners.

It has long been held that under the federal constitution, property may not be taken for public use without reasonable notice of the proceedings authorized for its taking, and without reasonable opportunity to be heard as to substantial matters of right affected by the taking. *Hoffman*, *supra*. A state statute violates the Fourteenth Amendment if, "in some fundamental way, it infringes the fundamental rights of citizens. *Id.* at 283. In this case, there is no public purpose use. The Church Hospital paid a bribe to a public authority to take the property for the Church Hospital's private use as parking spaces.

The Due Process Clause of the Fourteenth Amendment requires that a State prior to taking an action affecting an interest in property, provide notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of that action. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 195, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1982); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed.

stated that the fundamental right protected by the due process clause is the right to adequate notice and an opportunity to be heard before any state action depriving one of life, liberty or property is accorded finality. Adequate notice ensures the opportunity to be heard. Thus, *Mullane* established that state action affecting property must generally be accompanied by notification of that action. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S.Ct. 1340, 1344 (1988). The only notice given Petitioners in this case was the threat of "city action" made by the Church Hospital.

The fundamental requisite of due process is the opportunity to be heard. Applying the fundamental principles of due process, it is readily apparent that the lower courts misapplied those basic constitutional concepts – the Petitioners were not given a reasonable opportunity to protect their property from an arbitrary or unjust appropriation. The Petitioners were denied the process to be heard, and, moreover, were denied proper notice since the Authority, City and Church Hospital were convening, demanding bribes, and accepting bribes prior to the initiation of the taking the property of the Petitioners' property. Notice was too late. The Petitioners are must be given an opportunity to be properly heard. In a society where civil actions routinely require years to resolve, a procedure whereby constitutionally protected rights are terminated in fewer than ninety days cannot be permitted.

B. By Denying The Petitioners' Right To Conduct Discovery And Properly Present Their Case Before A Jury, The Petitioners' Claims Were Improperly Dismissed.

In Pennsylvania, preliminary objections "are intended as a procedure to resolve expeditiously the factual and legal challenges to the declaration of taking before the parties proceed to determine damages. In *Appeal of Bauerle*, 674 A.2d 1204, 1207 (Pa.Cmwlth. 1996); *North Penn Water Authority v. A Certain Parcel of Land*, 168 Pa.Cmwlth. 477, 650 A.2d 1197 (1994). But even though the legal challenges must proceed accordingly, the Petitioners' constitutional rights must be upheld. Since the lower courts rejected the Petitioners' objections, their defense to their property interests were dismissed and their constitutional rights were violated.

A dismissal ought not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v Gibson*, 355 U.S. 41, 4-46 (1957). Dismissal with prejudice is a harsh sanction to be resorted to only in extreme cases and is within the court's sound discretion; court must give full regard for severity of the sanction, granting dismissal sparingly and only when less drastic alternatives have been explored. *Jones v. Smith*, 99 F.R.D. 4 (1983). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 2 L.Ed.2d 80, 78 S.Ct. 99 (1957); *Melo-Sonic Corporation v. Crop*, 342 F.2d 856 (3rd Cir. 1965). A summary judgment motion is appropriate when there is no

genuine issue of material fact. *Anderson v. Liberty Lobby, Inc*, 477 U.S. 242, 252, 106 S.Ct. 2505 (1986) A dispute is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* A fact is "material" if a dispute over it might affect the outcome of the suit under the governing law. *Id.* No matter how likely it may seem that a pleader will be unable to prove his case, he is entitled, upon averring claim, an opportunity to prove his case, and complaint is not subject to dismissal unless it appears to certainty that Plaintiff cannot possibly be entitled to relief under any set of facts which could be proved in support of its allegations. *Pointer v. American Oil Co.*, 295 F.Supp.573 (1968). Courts may not dismiss complaint for insufficiency unless it clearly appears that by no stretch of the imagination is plaintiff entitled to any relief for claims asserted in his complaint. *Kozlowski v. Ferrarra*, 117 F.Supp. 650 (1954). Even if it is doubtful that plaintiff would ultimately prevail, if plaintiff colorably states facts which, if proven, would entitled him relief, motion to dismiss for failure to state a claim should not be granted. *Kronmuller v. West End Fire Co. No. 3 Fire Dept.*, 123 F3rd 170 (1988).

The Petitioner's case should have never been disposed of after filing preliminary objections. The lower courts' acted very quickly depriving the Petitioners their right to conduct discovery and investigate their claims. For example, the taking was filed on January 28, 1999. As a response, the Petitioners filed preliminary objections on February 19, 1999. After the Authority filed answers the court scheduled a conference which was held on March 16, 1999. Two hearings occurred in April 1999. Petitioners attorney was allowed to withdraw in April 1999 and Petitioners were required to pre

pare for trial without discovery. Thus, in less than three months' time, the Petitioners were deprived of their real estate, with no opportunity to conduct meaningful discovery to protect their constitutionally guaranteed interests.

Since the preliminary objections were overruled, the Petitioner's constitutional right to a jury trial was violated. *See Page v. Work*, 290 F.2d 323, 334 (9th Cir. 1961), *cert. denied*, 368 U.S. 875 (1961). The jury trial is not merely a procedural device, but, a fundamental right and an essential element of self government which the drafters of the Bill of Rights sought to preserve. To safeguard that right from judicial usurpation, the Seventh Amendment prohibits courts from taking away the role of the jury. Under the United States Supreme Court's precedents as to whether there is a statutory or constitutional right to a jury trial on a civil claim under a federal statute, before the court inquiries into the applicability of the federal constitution's Seventh Amendment, the court must first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided; however, where the court declines to find a jury right under the statute, the court must reach the constitutional question. *City of Monterey v. DelMonte Dunes*, 526 U.S. 687, 119 S.Ct. 1624 (1999). Consistent with the textual mandate of the federal constitution's Seventh Amendment that the right to a jury trial be preserved in suits "at common law," the United States Supreme Court, in interpreting the Seventh Amendment, (1) asks whether the court is dealing with a cause of action that either was tried at law at the time of the founding or is at least analogous to one that was; and (2) if the action in question belongs in the law category, then asks whether the particular trial decision must fall to the jury

in order to preserve the substance of the common-law right as it existed in 1791. *Id.*; *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 376, 134 L.Ed. 2d 577, 116 S.Ct. 1384 (1995). In order to preserve the right to a trial by jury in cases interpreting statutes, the Petitioners' case must be heard by a jury.

Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care. *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935); *Chauffeurs, Teamsters and Helpers v. Terry*, 110 S.Ct. 1339, 1344-45 (1990). So vital is this great constitutional right that "it is only in exceptional cases and for specific causes that a party may be deprived of it. *Grand Chute v. Winegar*, 82 U.S. 373, 375 (1872); *Jacob v. New York City*, 315 U.S. 752, 752-753 (1942). The right of jury trial in civil cases at common law is a ...right so fundamental and sacred to the citizens that it should be jealously guarded by the courts". *Id.*

This Honorable Court has been highly protective of the jury's role: "Credibility determinations, the weighing of the evidence, and the drawing of inferences from the facts are jury functions, not those of a judge. *Anderson, supra,* at 255. It would be an undue invasion of the jury's historic function for an appellate court to weigh the conflicting evidence and judge the credibility of witnesses. *Id.* The lower courts overruled the Petitioners' objections based upon the state statute's infringement of the their constitutional rights. Under the due process clause, property may not be taken for public use without reasonable notice of the proceedings authorized for its taking and without reasonable opportunity to be heard

as to substantial matters of right affected by the taking. *North Laramie Land Company v. Hoffman*, 268 U.S. 276, 282-283, 45 S.Ct. 491, 497-498 (1925). The Petitioners were never given reasonable opportunity to be heard as to the substantial matters affected by the eminent domain. More specifically, the Petitioners believe that if they were given the opportunity to perform discovery, clear and convincing evidence regarding the church owned hospital's influence over the Authority's decision would be brought forward. As stated in the facts, the Authority and the City were bribed by the Hospital in order to expand its facilities. Since the Hospital is owned by a church, they should have not had any influence over the Authority's and City's decisions, that is, a separation of church and state. Substantial matters affecting the Petitioners' property interests were not examined by the state courts thereby depriving the Petitioners of their constitutional rights.

This Honorable Court must grant this Petition for Certiorari so that it may clarify the standard where a constitutional violation of a statute that does not provide the Petitioners with an opportunity to discovery and investigate their claims and does not give a jury trial when the Seventh Amendment is applicable.

CONCLUSION

The Pennsylvania Supreme Court, and the Commonwealth's lower courts, have placed a high burden of proof upon the Petitioner to overcome a dismissal in the defense of their property interests. The state was bribed by a Church Hospital to perform a quick eminent domain taking of the Petitioners' property interests, in clear violation of their constitutional rights. The Court should grant *certiorari* to review this important matter, clarify the parties burden, order that the Petitioners have a constitutional right to defend their interests before a trier of fact since the statute is per se unconstitutional and their due process rights were violated.

Respectfully submitted,

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APPENDIX A-ORDER, DATED AUGUST 30, 2000

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: CONDEMNATION BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF ALLENTOWN OF 235 NORTH FIFTH STREET, CITY OF ALLENTOWN, LEHIGH COUNTY, PENNSYLVANIA, JOE LARRY THORPE (CONDEMNEE), LINDA D. THORPE (CONDEMNEE),

PETITION OF: JOE L. THORPE AND LINDA D. THORPE

No. 0025 M.D. Alloc. Dkt. 2000

Petition for Allowance of Appeal from the Order of the Commonwealth Court

ORDER

PER CURIAM:

AND NOW, this 30th day of August, 2000, the Petition for Allowance of Appeal is hereby DENIED.

APPENDIX B-ORDER AND OPINION, FILED JUNE 1, 1999

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA CIVIL DIVISION

IN RE: CONDEMNATION BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF ALLETOWN OF 235 NORTH FIFTH STREET, CITY OF ALLENTOWN, LEHIGH COUNTY, PENNSYLVANI

No. 99-C-0209

ORDER

NOW, this 1st day of June, 1999, upon consideration of the preliminary objections of Joe L. Thorpe and Linda D. Thorpe, as condemnees (hereinafter referred to as the "Condemnees"), and after an evidentiary hearing conducted before the undersigned on April 16, 1999 and April 19, 1999, and upon consideration of the record, the Findings of Fact and Conclusions of Law filed by the Parties and for the reasons expressed in the accompanying Opinion,

IT IS HEREBY ORDERED that said preliminary objections are OVERRULED.

IT IS FURTHER ORDERED that the Condemnees shall permithe Redevelopment Authority immediate entrance onto the property located at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania for the purpose of obtaining appraisal.

BY THE COURT:

Lawrence J. Brenner, J

****

APPEARANCES:

C. COLLINS BROWN, ESQUIRE
On behalf of the Redevelopment Authority of the City of Allentown, as Condemnor

JOE L. THORPE, ESQUIRE,
On behalf of Joe L. Thorpe and Linda D. Thorpe, as Condemnees

****

OPINION

LAWRENCE J. BRENNER, J.

On or about January 28, 1999, the Redevelopment Authority of the City of Allentown, a public body, corporate and politic, established pursuant to the Urban Redevelopment

Law of the Commonwealth of Pennsylvania (hereinafter referred to as the "Redevelopment Authority" or the "Condemnor"), filed its Declaration of Taking[1] for the property located at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania, which is owned by Joe L. Thorpe and Linda D. Thorpe, a husband and wife (hereinafter referred to as the "Condemnees"). Thereafter, on February 19, 1999, the Condemnees filed Preliminary Objections[2] to the Declaration of Taking. Condemnor filed its Answer to the Preliminary Objections on March 12, 1999. An evidentiary hearing relative to the within matter was conducted before this Court on April 16, 1999 and April 19, 1999.

FINDINGS OF FACT

1. During the mid-1990's, a blight survey was conducted that encompassed 79.214 acres and thirteen thousand six hundred and fifteen residential property (13, 615). (N.T. 4/16/99, pp. 33, 50, 89-90; N.T. 4/19/99, pp. 168, 182;

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[1] The Purpose of the Condemnor's Declaration of Taking is to eliminate blight.

[2] Preliminary objections in the context of eminent domain actions serve a different purpose than preliminary objections filed in other civil actions. *North Penn Water Authority v. Malin*, 168 Pa. Cmwlth. 477, 650 A.2d 1197 (1994). In eminent domain cases, preliminary objections are intended as a procedure to resolve expeditiously the factual and legal challenges to a declaration of taking before parties proceed to determine damages. See Section 406 of the Eminent Domain Code, Act of June 22, 1964, Special Session, P.L. 84, as amended, 26 P.S. § 1-406(a).

Condemnee Ex. 3; Condemnee Ex. 12; Condemnee Ex. 13; Condemnee Ex. 22). As a result, in February of 1998, a blight certification report was prepared by the Department of Code Enforcement for the City of Allentown and the Bureau of Rehabilitation. (Condemnee Ex.22).

2. The Allentown City Planning Commission held public hearings on February 10, 1998 and March 10, 1998, regarding the issue of designating as blight an area in Allentown. (N. T. 4/19/99, 111-112; Condemnee Ex. 2)

3. After reviewing the blight certification report and holding the aforementioned public hearings, Resolution No. 1998-1, entitled "Blight Declaration for an Area Bounded by North Hall, North Fourth, Linden, and Gordon Streets," was adopted on or about April 14, 1998. (N.T. 4/16/99, p. 62). This area encompasses five hundred eighty-five (585) residential properties. (N.T. 4/16/99, p. 33; Condemnee Ex. 3; Condemnee Ex.22).

4. Through Resolution No. 1998-1, the Allentown City Planning Commission certified to the Redevelopment Authority a Redevelopment Area[3] in accordance with the provisions of the Pennsylvania Urban Redevelop-

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[3] Section 1703(n) defines "Redevelopment Area" as follows:

> "Any area, whether improved or unimproved, which a planning commission may find to be blighted because of the existence of the conditions enumerated in section2 of this act so as to require redevelopment under the provision of this act."

35 P.S. §1703(n).

ment Law, Act of May 24, 1945, P.L. 991, as amended, 35 P.S. §§1701 et seq. *See* 35 P.S.§§ 1702 and 1710(b). (N.T. 4/16/99, pp.32, 41-42, 62, 71; N.T. 4/19/99, pp. 80, 166-169, 172-173).

5. The Allentown City Planning Commission, by Resolution No. 1998-1, designated the area bounded by Linden Street on the south, Gordon Street on the north, North Fourth Street on the east and North Hall Street on the west as blighted. (N.T. 4/16/99, p. 32).

6. Approximately forty-four percent (44%) of the exteriors of the buildings in the aforementioned blighted area were deemed to be in fair to poor condition. (N.T. 4/16/99, pp. 30, 36, 41; Condemnee Ex. 2; Condemnee Ex. 12).

7. The Condemnees' property is located within the designated blighted area. (N.T. 4/16/99, pp. 43-44).

8. The Condemnees are in possession of the subject property.

9. By Resolution No. 1998-2, adopted on April 14, 1998, the Allentown City Planning Commission formulated a Redevelopment Area Plan[4], entitled "Sacred Heart Hospital Center for Primary Health and Family Practice De-

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[4] Section 1703(o) defines "Redevelopment Area Plan" as follows:

> "A plan for the redevelopment of all or part of a redevelopment area made by a planning commission in accordance with the provisions of section ten of this act."

35 P.S. § 1703(o).

velopment." *See* 35 P.S. § 1710(c). (N.T. 4/16/99, pp. 62-63, 71-72; N.T. 4/19/99, pp. 166-169).

10. The purpose of the Redevelopment Area Plan was to rehabilitate the blighted area by completing the assemblage of property, making possible the construction, establishment and operation of a Center for Primary Health and Family Practice.

11. Sacred Heart Hospital, a subsidiary of Sacred Heart Care System, a Pennsylvania non-profit corporation, operates the Center for Primary Health and Family Practice. (N.T. 4/16/99, p. 63; N.T. 4/19/99, pp. 14-16; Condemnee Ex. 9)

12. In conformity with Section 1710(c) of the Urban Redevelopment Law, the Redevelopment Area Plan included an area boundary map; land use plan; standards for population density, land coverage and building density; preliminary site plan; zoning changes; changes to street layout and traffic regulations; effects of displacements; a cost estimate; and continuing controls. *See* 35 P.S. § 1710(c)(1)-(9). (Redevelopment Area Plan)

13. The Redevelopment Area Plan was referred to the Redevelopment Authority for the purpose of preparing a Redevelopment Proposal[5] in accordance with the Urban Redevelopment Law, 35 P.S. §§ 1710(a), (d).

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[5] Section 1703(r) defines "Redevelopment Proposal as follows:

> "A proposal, including a copy of the redevelopment area plan and supporting data submitted for approval to the governing body by [a] [Redevelopment] Authority, for

14. In compliance with Section 1710(d) of the Urban Redevelopment Law, the Redevelopment Authority held a public hearing on August 11, 1998, pursuant to its preparation of a Redevelopment Proposal for the Redevelopment Area. (Condemnee Ex. 8).

15. On or about September 8, 1998, in accordance with Section 1710 of the Urban Redevelopment Law, the Redevelopment Authority adopted a resolution entitled, "Resolution of the Redevelopment Authority of the City of Allentown Providing for the Approval of the Redevelopment Area Plan and the Approval for the Redevelopment Proposal of the Sacred Heart Hospital Center for Primary Health and Family Practice Development Project." (N.T. 4/19/99, pp. 78-82, 84, 86-90; Condemnor Ex.2).

16. Prior to adopting the aforementioned resolution, the Redevelopment Authority reviewed substantial documentation to substantiate that the Sacred Heart Hospital Center for Primary Health and Family Practice Development Project was a public purpose project. (N.T. 4/19/99 pp. 84-89). Such documentation included:

    A. United States Department of Housing and Urban Development Special Purpose Grant Application (Condemnee Ex. 9; Condemnor Ex. 4);
    B. Letter from the United States Department of Housing and Urban Development to Mayor

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the redevelopment of all or any part of a redevelopment area."

35 P.S. § 1703(r).

Heydt announcing the approval of the Special Purpose Grant (Condemnor Ex. 2);

C. Bill No. 9-1996, dated February 7, 1996, passed by the Council of the City of Allentown, providing for the expenditures of monies received under the Special Purpose Grant (Condemnor Ex.5);
D. Application for a grant to HRSA (Condemnor Ex.2);
E. Summary of the Redevelopment Authority's public hearing held on August 11, 1998 (Condemnor Ex. 2; Condemnee Ex. 8);
F. Resolution 1998-1 of the Allentown City Planning Commission (Condemnor Ex. 2); and
G. Resolution 1998-2 of the Allentown City Planning Commission (Condemnor Ex. 2).

(N.T. 4/19/99, pp. 84-89; Condemnor Ex. 2).

17. The Redevelopment Authority submitted the subject Redevelopment Proposal to the Allentown City Planning commission for review on September 11, 1998, pursuant to Section 1710(e) of the Urban Redevelopment Law. (N.T. 4/19/99, pp. 80-81).

18. The Allentown City Planning Commission, by Resolution 1998-3, dated October 13, 1998, certified to the governing body[6] of the City of Allentown, the Council

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[6] Section 1703(f) defines "Governing Body" as follows:

"In the case of a city, the city council or other legislative body thereof and in the case of a county, the board of county commissioners or other legislative body thereof."

35 P.S. § 1703(f)

of the City of Allentown, its favorable recommendation on the Redevelopment Proposal. (N.T. 4/19/99, p.81).

19. On October 26, 1998, the Redevelopment Authority submitted the Redevelopment Proposal to the Council of the City of Allentown. *See* 35 P.S. § 1710(f).

20. On December 2, 1998, the Council of the City of Allentown conducted a public hearing in compliance with Section 1710(g) of the Urban Redevelopment Law.

21. The Council of the City of Allentown, by Resolution Number 41, approved the Redevelopment Proposal for the Sacred Heart Hospital Center for Primary Health and Family Practice Development on December 2, 1998, authorizing the Redevelopment Authority to acquire all7 properties affected by the Redevelopment Proposal. *See* 35 P.S. §1710(i). (N.T. 4/19/99, pp. 91-92; Condemnor Ex. 3; Condemnee Ex. 19).

22. On December 8, 1998, the Redevelopment Authority adopted a resolution authorizing the acquisition of the Conemnees' property located at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania, through the power of eminent domain, if necessary, in order to ac-

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[7] There was more than one (1) property involved at the commencement of the procedure as it would relate to the Redevelopment Area Plan and the Sacred Heart Hospital Center for Primary Health and Family Practice project. (N.T. 4/19/99, pp. 82-83). Needed, thirty (30) properties were affected. (N.T. 4/19/99, p. 83; Condemnee Ex.)

complish the public purposes of the Urban Redevelopment Act and the Redevelopment Proposal.

23. A draft of a Redeveloper's Contract was prepared by the Redevelopment Authority which involved the sale of land for private development between the Redevelopment Authority and Sacred Heart Hospital. (N.T. 4/19/99, p. 82; Condemnee Ex. 20).

24. From a site planning standpoint, the removal this subject property makes good sense. (N.T. 4/16/99, p. 69; N.T. 4/19/99, pp. 173-176).

25. The Certification of Blight and the preparation of the Redevelopment Area Plan by the Allentown City Planning Commission and the Redevelopment Proposal by the Redevelopment Authority occurred at a time when a public need for a primary health care facility in center city Allentown already had been recognized by the City of Allentown and Sacred Heart Hospital. (N.T. 4/19/99, pp. 43-56, 102-103, 205-208).

26. In fact, prior to 1994, Sacred Heart Hospital identified a need for the new Center for Primary Health and Family Practice because Sacred Heart Hospital was experiencing serious shortages in space, accommodations and physician providers to address the growing needs and demands of the community. (N.T. 4/19/99, pp. 43-44).

27. Consequently, on or around March 21, 1995, the City of Allentown received a Special Purpose Grant from the United State Department of Housing and Urban Development in the maximum amount of One Million Five Hundred Thousand ($1,500,000.00) dollars. This grant

was awarded for the development of a Center for Primary Health and Family Practice which was needed to provide services to the undeserved residents of the City of Allentown. (Condemnee Ex. 9; Condemnor Ex. 4; N.T. 4/19/99 p. 26)

28. The Council of the City of Allentown, by Bill No. 9-1996, dated February 7, 1996, passed an ordinance providing for the expenditure of the monies received under the Special Purpose Grant for the purpose of supporting the development of the Sacred Heart Hospital Center for Primary Health and Family Practice. (Condemnee Ex. 1; Condemnor Ex. 5).

29. On or about August 7, 1996, Sacred Heart Hospital entered into a Participating Party Agreement with the City of Allentown to accept the special purpose grant funds from the United State Department of Housing and Urban Development. (N.T. 4/19/99, pp. 26-27, Condemnee Ex. 14; Condemnee Ex. 21).

30. Thereafter, on November 6, 1997, the Redevelopment Authority and Sacred Heart Hospital, as redeveloper, entered into an agreement whereby Sacred Heart Hospital agreed to indemnify the Redevelopment Authority for its part in the redevelopment of the area surrounding Sacred Heart Hospital. (Condemnee Ex. 1).

31. Due to its location, Sacred Heart Hospital provides the majority of the health car to low income, underinsured and uninsured residents of inner-city Allentown. (N.T. 4/16/99, p. 58; N.T. 4/19/99, pp. 43-56, 102-103, 205-208). In fact, Sacred Heart Hospital is the only full ser-

vice acute care hospital located in the City of Allentown.

32. The population of elderly residents, young children and minorities continues to grow in the City of Allentown, particularly the inner-city. (N.T. 4/19/99, pp. 48-50). This constant growth places a heavy burden on the health care system in the City of Allentown. (N.T. 4/19/99, pp. 43-56, 58, 102-103, 205-208). Therefore, the need for increased primary and preventative health care services that are accessible and affordable to the aforementioned population is immediate. (N.T. 4/19/99, pp. 43-56, 102-103, 205-208, Condemnee Ex.9).

33. Sacred Heart Hospital's lead role in the Center for Primary Health and Family Practice Development is critical since Sacred Heart Hospital has demonstrated deep commitment to providing accessible and affordable high-quality health care services to the undeserved residents of inner-city Allentown. (N.T. 4/19/99, pp. 43-56, 102-103, 205-208; Condemnee Ex.9).

34. The Sacred Heart Hospital Center for Primary Health and Family Practice is intended to provide and increase the availability of a full-range of primary and preventative health care services to the residents of inner-city Allentown, with a particular emphasis on the low income families, the uninsured, children and the elderly, as well as to ensure that these services will be available for the long term. (N.T. 4/19/99, pp. 43-56, 102-103, 205-208; Condemnee Ex. 9).

35. In support of Sacred Heart Hospital's development of a Center for Primary Health and Family Practice Development, the City of Allentown received public purpose funding through the aforementioned United States Department of Housing and Urban Development Special Purpose Grant, a Pennsylvania Department of Public Welfare grant in the amount of One Million ($1,000,000.00) dollars and a United States Department of Health and Human Resources grant in the amount of One Million Nine Hundred Fifty-Nine Thousand ($1,959,000.00) dollars. (N.T. 4/16/99, pp. 56-57; N.T. 4/19/99, pp. 53056, 195-197). Other funding included a Two Hundred Thousand ($200,000.00) dollar grant from the Trexler Trust, One Mill ($1,000,000.00) dollars from the Signal family and corporate commitments totaling approximately One Million Five Hundred Thousand ($1,500,000.00) dollars. (N.T. 4/19/99, p. 53).

36. The Condemnees' property is necessary for the Sacred Heart Hospital Center for Primary Health and Family Practice in order to provide adequate parking for the infirmed, elderly young children and the obstetrics and gynecological patients who need immediate access to this facility. (N.T. 4/19/99, pp. 51-52, 103-105, 173-176). The increasing level of activity and the sheer high volume of patients necessitates the acquisition of the Condemnees' property. (N.T. 4/19/99, pp. 44-52).

37. The Sacred Heart Hospital Center for Primary Health and Family Practice seeks to improve the health status of the community which aids economic and community development by reducing health care costs, reducing the incidence of potentially debilitating diseases, improving

sanitation and maintaining a health population. In addition, the Sacred Heart Hospital Center for Primary Health and Family Practice revitalizes, beautifies and improves the security in the neighborhood. (Condemnee Ex. 9)

38. The Center for Primary Health and Family Practice saw its first patient in March of 1999. (N.T. 4/19/99, p. 98)

CONCLUSIONS OF LAW

1. The Redevelopment Authority, the Allentown City, Planning Commission and the Council of the City of Allentown have satisfied all the statutory requirements mandated by the Pennsylvania Urban Redevelopment Law prior to the Redevelopment Authority's decision to acquire the Condemnees' property by eminent domain. 35 P.S. §§ 1701-1719.

2. The Redevelopment Authority has the discretion of preparing a Redevelopment Proposal for the redevelopment of all or part of the blighted areas. 35 P.S. § 1710(d).

3. The elimination of blight by redeveloping the Redevelopment Area for a Center for Primary Health and Family Practice facility which will meet the long term health care needs of the undeserved, elderly, minority, low income, underinsured and uninsured residents of inner-city Allentown constitutes a proper public purpose. 35 P.S. § 1702.

4. The Redevelopment Authority has the authority to exercise the power of eminent domain over the property lo-

cated at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania. 35 P.S. §§ 1702, 1712.

5. A taking of property by the power of eminent domain does not lose its public purpose character merely because there may exist in the operation some feature of private gain, for if the public good is enhanced, it is immaterial that a private interest also may be furthered.

6. The Redevelopment Authority may convey the subject property to a private entity for redevelopment, as envisioned by the Pennsylvania Urban Redevelopment Law.

7. The condemnation of the property situated at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania, is within the reasonable discretion of the Redevelopment Authority and it is not an excessive taking.

8. Condemnees have not met their heavy burden of demonstrating that the Redevelopment Authority is guilty of bad faith or committed an abuse of discretion or acted in an arbitrary, capricious or fraudulent manner with regard to the decision to condemn the property located at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania.

9. The actions of the Redevelopment Authority do not constitute an improper delegation of authority to a private entity, but instead demonstrate a proper exercise of its discretion with regards to the redevelopment and rehabilitation of a blighted area.

10. Condemnees have not met their heavy burden of proving that there was any collusion by, between or among

the Redevelopment Authority, the Allentown City Planning Commission, the Council of the City of Allentown and Sacred Heart Hospital regarding this eminent domain proceeding.

DISCUSSION

A. *Statutory Compliance*

Initially we note that the scope of judicial review of a certification of blight is a limited one. *In re Condemnation by the Redevelopment Auth. of the City of Harrisburg*, 30 Pa. Cmwlth. 273, 276, 373 A.2d 774, 775 (1977). Indeed, "[t]he power of discretion over what areas are to be considered blighted is solely within the power of the [Redevelopment]Authority. The only function of the courts in this matter is to see that the [Redevelopment] Authority has acted not in bad faith; to see that the [Redevelopment] Authority has followed the statutory procedures in making its determination; and finally, to see that the actions of the [Redevelopment] Authority do not violate any of our constitutional safeguards." *City of Harrisburg*, 30 Pa. Cmwlth. a 276, 373 A.2d at 776 (citing *Crawford v. Redevlopment Auth.*, 418 Pa. 549, 554, 211 A.2d 866, 868 (1965)).

In the instant case, the record clearly demonstrates that the Redevelopment Authority, the Allentown City Planning Commission and the Council of the City of Allentown have satisfied all of the statutory requirements imposed by the Urban Redevelopment Law, 35 P.S. §§ 1701-1719. The redevelopment of the Redevelopment Area was initiated pursuant to the Urban Redevelopment Law, 35 P.S. § 1702, when, on April 14, 1998, the Allentown City Planning Commission

declared blighted an area in the inner-city of Allentown bounded by Linden Street on the south, Gordon Street on the north, North Fourth Street on the East and North Hall Street of the west. The record indicates that the Allentown City Planning Commission based its decision on a blight certification report that was prepared by the Department of Code Enforcement for the city Allentown and the Bureau of Rehabilitation in February of 1998, as well as public hearings that were held by the Allentown City Planning Commission regarding whether the area should be designated a blighted. After these hearings and review of the reports and supporting documentation provided, the Allentown City Planning Commission declared the area to be blighted. Consequently, the Redevelopment Authority promulgated a Redevelopment Proposal which was then submitted to the Council of the City of Allentown on October 26, 1998. Thereafter, on December 2, 1998, the Council of the City of Allentown approved the Redevelopment Proposal for the Sacred Heart Hospital Center for Primary Health and Family Practice Development. These actions are consistent with the procedures outlined in the Urban Redevelopment Law, 35 P.S. §§ 1701-1709. *Belovsky v. Redevelopment Auth.*, 357 Pa. 329, 335-336, 54 A.2d 277, 280-281 (1947);

Furthermore, the condemnees' contention that the Redevelopment Authority acted improperly in producing a Redevelopment Proposal that involved only a portion of the area originally certified as blighted is without merit. This Court recognizes that a Redevelopment Proposal need not address the entire area that has been designated as blighted. In fact, a Redevelopment Proposal which addresses only a portion of a blighted area is specifically authorized in the Urban Rede-

velopment Law. *See* 35 P.S. § 1710(d)8; *City of Harrisburg*, 30 Pa. Cmwlth. at 277, 373 A.2d at 776.

Moreover, the Condemnees presented no evidence that the actions of the Redevelopment Authority, the Allentown City Planning Commission or the Council of the City Allentown leading up to the condemnation of the Condemnees' property were arbitrary or capricious. It should be noted that the fact that the Condemnees' property may itself be structurally sound is not sufficient to prevent the condemnation when it is located in an are properly determined to be blighted. *City of Harrisburg*, 30 Pa. Cmwlth. at 277, 373 A.2d at 776; *Leo Realty Co. v. Redevelopment Auth. of Wilkes-Barre*, 13 Pa. Cmwlth. 288, 291, 320 A.2d 149, 151 (1974). Accordingly, this Court finds that the respective governing authorities, namely the Redevelopment Authority, the Allentown City Planning Commission and the Council of the City of Allentown, acted appropriately and legally with regard to this condemnation proceeding.

B. *Public Purpose*

The Condemnees next argue that the condemnation was for a private purpose, rather than for a public purpose, because the condemnation was solely for the benefit of Sacred Heart Hospital. We cannot agree with this assertion. The Redevelopment Proposal serves the multi-faceted public

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8 Section 1710(d) states in pertinent part:

> "In conformity with such redevelopment area plan the Authority shall prepare a proposal for the redevelopment of *all or part of such area*."

35 P.S. § 1710(d) (emphasis added).

purpose of the elimination of blight an the development of a desperately need facility.[9]

Firstly, the court of this Commonwealth have consistently held that public uses for eminent domain purposes include the redevelopment of blighted areas. *Belovsky*, 357 Pa. at 339, 54 A.2d at 282. The condemnees' property is located within the area certified to be blighted, within the Redevelopment Area Plan and within the area to be redeveloped pursuant to the Redevelopment Proposal. As a consequence, the Redevelopment Authority is fully within its statutorily conferred authority to constitutionally exercise its power of eminent domain upon the Condemnees' property. 35 P.S. § 1702. Specifically, Section 1702 of the Urban Redevelopment Law states in pertinent part:

> [I]t is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as *Redevelopment Authorities, which shall exist and operate for the public purposes of the elimination of blighted areas through economically and socially sound redevelopment of such areas*, as provided by this act, in conformity with the com-

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[9] It should be noted that the federal government, through the United States Department of Housing and Urban Development, has found that the Sacred Heart Hospital Center for Primary Health and Family Practice serves a public purpose by providing health care to the undeserved residents of inner-city Allentown. The federal government only endows with funds those projects that have public purposes.

> prehensive general plan of their respective municipalities of residential, recreational, commercial, industrial or other purposes, and otherwise encouraging the provision of healthful homes, a decent living environment and adequate places of employment of the people of this Commonwealth. *Such purposes are hereby declared to be public uses* for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

35 P.S. § 1702 (emphasis added).

Furthermore, this Court notes that a taking does not lose its public character merely because there may exist in the operation some feature of private gain. *In re Condemnation of Land of Heim*, 151 Pa. Cmwlth. 438, 446. 617 A.2d 74, 78, *appeal denied*, 535 Pa. 625, 629 A.2d 1385 (1992); *Belovsky*, 357 Pa. at 341, 54 A.2d at 283; *In re Condemnation of Lands in City of Scranton v. Dakiewicz*, 132 Pa. Cmwlth. 175, 183, 572 A.2d 250, 254 (1990). It is well-settled law that as long as the public good is enhanced, it is immaterial that a private interest may also benefit. *Id.* In the instant case, the testimony indicated that the elimination of blight and the proposed Sacred Heart Hospital Center for Primary Health and Family Practice will greatly benefit the community by increasing the availability of health care services to the undeserved residents of inner-city Allentown and by ensuring that these services will be available to the growing populations of elderly residents, young children and minorities for the long term. It is inconsequential that this proper transfer of the blighted property to Sacred

Heart Hospital will provide a benefit to the private owner. The requirement is not that there be a weighing of benefit to the public and private sectors, but rather only that there be some evident public purpose which pervades the venture at issue. *Appeal of Mershon*, 76 Pa. Cmwlth. 424, 463 A.2d 1287 (1983).

In addition, the Condemnees contend that the Redevelopment Authority's taking of their property and then subsequently conveying it to Sacred Heart Hospital, as redeveloper, advances a private party's interest and not a public purpose. However, this argument is without merit since courts of this Commonwealth have consistently rejected similar arguments. *See Belovsky*, 357 Pa. at 340, 54 A.2d at 282-283 (stating that a public purpose does not require a continuing of ownership of the property in order to carry out the full purpose of the Urban Redevelopment Act, but is directed solely to the clearance, reconstruction and rehabilitation of the blighted area, and after this is accomplished, the public purpose is completely realized and it is proper that the property be re-transferred to private ownership); *City of Scranton*, 132 Pa. Cmwlth. at 182-183, 572 A.2d at 254. While it is true that private property cannot be taken by eminent domain for the sole purposes of devoting it to a private purpose of another, if the property is taken for a proper public purpose, the property may be permitted to revert to private ownership when the public purpose is discharged. *Fleet v. Redevelopment Auth. of Washington County*, 147 Pa. Cmwlth. 169, 607 A.2d 311, *appeal denied*, 533 Pa. 603, 617 A.2d 1276 (1992). The removal

of blight, as in the instant case, serves a public purpose. *Id.*

Finally, even though the Sacred Heart Hospital Center for Primary Health and Family Practice is open an operational, the condemnation of the property located at 235 North Fifth Street, Allentown, Lehigh County, Pennsylvania, is not excessive in light of the Redevelopment Area Plan and the Redevelopment Proposal for the redevelopment of the blighted area. This Court recognizes that private property may only be acquired in an eminent domain proceeding to the extent reasonably required for the public. *Redevelopment Auth. of the City of Erie v. Owners*, 1 Pa. Cmwlth. 378, 391, 274 A.2d 244, 251 (1971); *Pennsylvania Dept. of Trans. v. Montgomery Township*, 655 A.2d 1086, 1089 (Pa. Cmwlth.), *appeal denied*, 542 Pa. 651, 666 A.2d 1059 (1995); *In re Condemnation of Property of Waite*, 163 Pa. Cmwlth. 283, 289, 641 A.2d 25, 28, *appeal denied*, 539 Pa. 657, 651 A.2d 543 (1994). However, the quantum of land to be acquired in a condemnation proceeding is a matter within the discretion of the condemnor. *Id.*

In the instant case, the Redevelopment Authority determined that from a planning and public safety standpoint, and in light of the traffic patterns in the vicinity of the Redevelopment Area, the Condemnees' property is necessary for the Sacred Heart Hospital Center for Primary Health and Family Practice facility. In particular, the taking of the Condemnees' property is necessary in order to provide adequate accessible parking for the elderly, the disabled, young children and the obstetric and gynecological patients, who need immediate access to

the facility. The structure located at 235 North Fifth Street prevents this contemplated access to the parking lot. Thus, in consideration of the safety of the patients visiting the center, the Redevelopment Authority has deemed the condemnation of the property to be necessary. This Court finds that this determination is within the reasonable discretion of the Condemnor.

C. *Burden of Proof*

Condemnees assert that the Redevelopment Authority, the Allentown City Planing Commission and the Council of the City of Allentown did not consider the public welfare in making their determination with regard to the redevelopment of the Redevelopment Area, but merely considered the wishes and desires of Sacred Heart Hospital. Specifically, the Condemnees argue that the Redevelopment Authority embarked on the arduous process of blight certification and the preparation of a Redevelopment Proposal solely at the request of Sacred Heart Hospital. However, the Condemnees have failed to set forth evidence to establish this claim that the Redevelopment Authority pursued a private motivated purpose at the initiation of a private entity. Therefore, their argument must fail.

Initially we note that a planning commission and a redevelopment authority are presumed to act in good faith [10] in declaring an area of blight. *In re Condemna-*

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[10] It should be noted that:

> "The [ ] words [palpable bad faith] have vital meaning when used as a limitation on the power of a governmental

tion of Premises 130 Court Street in the City of Reading, 36 Pa. Cmwlth. 394, 397, 388 A.2d 1108, 1109-1110 (1978). The burden of proving fraud or an abuse of discretion is an extremely heavy one. *In re School District of Pittsburgh*, 430 Pa. 566, 244 A.2d 42 (1968); *In the Matter of Urban Redevelopment Auth. of E-V Co.*, 117 Pa. Cmwlth. 475, 482, 544 A.2d 87, 91 (1988), *affirmed*, 527 Pa. 550, 594 A.2d 1375 (1990). Furthermore, the party seeking to prove that a municipality's decision to condemn property was an abuse of discretion carries extremely heavy burden. *Heim*, 151 Pa. Cmwlth. at 442, 617 A.2d at 76; *In re Condemnation of Land Owned by Spory*, 54 Pa. Cmwlth. 17, 21, 419 A.2d 804, 805 (1980); *Pidstawski v. South Whitehall Township*, 33 Pa. Cmwlth, 162, 380 A.2d 1322 (1977). There is strong

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> authority to condemn property. Bad faith is generally the opposite of good faith and . . . implies a tainted motive of interest. Bad faith becomes palpable wen such motive is obvious or readily perceived. The courts have the responsibility to see that an authority has not acted in bad faith, and that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised."

Erie, 1 Pa. Cmwlth. at 383, 274 A.2d at 247. Furthermore, a party alleging that an authority has acted in "palpable bad faith" must prove it by clear, precise and indubitable evidence. *Id.*; *In Re Condemnation Redevelopment Auth. of the City of Lancaster*, 682 A.2d 1369, 1372 (Pa. Cmwlth. 1990); *Fleet*, 147 Pa. Cmwlth. at 172, 607 A.2d at 312. Condemnees clearly have failed to sustain this burden.

presumption that the condemnor has acted properly. *Waite*, 163 Pa. Cmwlth. at 288, 641 A.2d at 28.

While it is true that Sacred Heart Hospital has purchased properties for a number of years in the blighted areas prior to the area's designation as blighted, no facts were brought forth in the record or at the evidentiary hearing to support the argument that the Redevelopment Authority exercised its power of eminent domain at the request of Sacred Heart Hospital in securing the properties in the vicinity of the Sacred Heart Hospital Center for Primary Health and Family Practice. Instead, the record reveals that the Redevelopment Proposal, as part of the Redevelopment Area Plan, incorporated initiatives undertaken by the City of Allentown beginning several years prior to the certification of blight by the Allentown City Planning Commission. Central to those initiatives and to the Redevelopment Proposal was a Center for Primary Health and Family Practice to be run and maintained by Sacred Heart Hospital in order to sustain the increased public need for a primary health care facility in center city Allentown. The fact that the Redevelopment Authority chose to address this particular area when a need already had been identified, and Sacred Heart Hospital was prepared to develop this area in accordance with satisfying need, illustrates the practical issues connected with the decision of the Redevelopment Authority to rehabilitate a blighted area. The Urban Redevelopment Law and the cases thereunder provide that a Redevelopment Authority, as condemnor, has the authority to make such decisions with regard to the desired redevelopment of the blighted areas. *Crawford*, 418 Pa.

at 554, 211 A.2d at 868. This Court finds that the Redevelopment Authority's decision to rehabilitate the blighted area in a manner that accomplishes public good by providing primary health care to the elderly, young children, and minorities and the economically disadvantaged residents of inner-city Allentown, is not an abuse of discretion or a capricious, arbitrary or fraudulent act or an act of bad faith. *See Fleet*, 147 Pa. Cmwlth. at 173-174, 607 A.2d at 313.

Furthermore, Condmenees argue that the failed negotiations between them and Sacred Heart Hospital regarding the sale of their property establishes that the Redevelopment Authority, the Allentown City Planning Commission and the Council of the City of Allentown have act4d in collusion with Sacred Heart Hospital in this condemnation proceeding. However, we cannot agree with such an assertion.

The Urban Redevelopment Law provides the statutory framework within which the Redevelopment Authority acts and provides the source of authority for the Redevelopment Authority to exercise the power of eminent domain. 35 P.S. §§ 1701 *et seq.* The Urban Redevelopment Law mandates that the Redevelopment Authority act in conjunction with the Allentown City Planning Commission and the Council of the City of Allentown. Since the Redevelopment Authority cannot act alone, it would be ineffective for it to solely delegate its power of eminent domain to Sacred Heart Hospital. Indeed, a more widespread conspiracy among al three (3) government agencies must exist in order to effectively delegate the authority to Sacred Heart Hospital for

its private purposes. Although Condemnees have asserted that such a conspiracy existed, they have failed to provide any evidence to support this theory. To the contrary, the record is replete with considerations of the public good and the general welfare of the community by the Redevelopment Authority, the Allentown City Planning Commission and the Council of the City of Allentown, as well as strict compliance with the urban redevelopment process. Accordingly, this Court finds that the rightful exercise of discretion does not constitute an unconstitutional delegation of authority to a private entity.

Based on the foregoing reasons, this Court finds that the Redevelopment Authority, the Allentown City Planning Commission and the Council of the City of Allentown id not act arbitrarily, capriciously, in bad faith or fraudulently in fulfilling the public purpose of rehabilitating a blighted area by providing an urgently needed primary health care facility.[11]

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[11] Furthermore, it should be noted that the agreement dated November 6, 1997, between the Redevelopment Authority and Sacred Health Hospital, as redeveloper, whereby Sacred Heart Hospital agreed to indemnify the Redevelopment Authority for its part in the redevelopment of the areas surrounding Sacred Heart Hospital is not indicative or representative of bad faith or collusion. In fact, the Pennsylvania Supreme Court has held that such agreements are not per se improper. *In the Matter of the Condemnation by the Township of Upper St. Clair v. Fryer*, 138 Pa. Cmwlth. 321, 324, 587 A.2d 907, 909 (1991). *See Also Heim*, 151 Pa. Cmwlth. at 446-448, 617 A.2d at 78-79; *Washington Park, Inc. Appeal*, 425 Pa. 349, 356-357, 229 A.2d 1, 4-5 (1967).

Accordingly, for all of the aforementioned reasons, the Condmenees' Preliminary Objections are overruled.

APPENDIX C – MEMORANDUM OPINION BY JUDGE COLINS, FILED DECEMBER 21, 1999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: CONDEMNATION BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF ALLENTOWN OF 235 NORTH FIFTH-STREET, CITY OF ALLENTOWN, LEHIGH COUNTY, PENNSYLVANIA, JOE LARRY THORPE (CONDEMNEE) LINDA D. THORPE (CONDIEMNEE) No. 1595 C.D. 1999

JOE L. THORPE and LINDA D. THORPE,
Appellants

Submitted : November 12, 1999

BEFORE:

HONORABLE JAMES GARNDER COLINS, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY JUDGE COLINS

FILED: December 21, 1999

Joe L. Thorpe and Linda D. Thorpe appeal the order of the Court of Common Pleas of Lehigh County (trial court) dismissing their preliminary objections to the Redevelopment Authority of the City of Allentown's (Authority) declaration of taking and granting the Authority immediate entrance onto the property owned by the Thorpes for the purpose of obtaining an appraisal. We affirm.

The property owned by the Thorpes, located in the City of Allentown is in an area designated as "blighted." (Findings of Fact No.7) Pursuant to resolution, the Allentown City Planning Commission formulated and ultimately adopted a redevelopment area plan intended to rehabilitate the blighted area through the establishment and operation of a Center for Primary Health and Family Practice. (Findings of Fact Nos. 9-21.) On December 8, 1998, the authority adopted a resolution authorizing the acquisition of the Thorpe property through the power of eminent domain. (Finding of Fact No.22)

When negotiations for the purchase of the Thorpe property proved unavailing, the Authority filed a declaration of taking in response to which the Thorpes filed preliminary objections. Without holding an evidentiary hearing, the trial court overruled the preliminary objections. This appeal followed.

Initially, we note that the Thorpe brief fails to address the questions presented in contravention of Pa.R.A.P. 2119 (relating to Argument). While the brief does provide references to the record, the argument presented is a mere recitation of what the Thorpes believe were errors in the prior proceeding, and it fails to analyze the questions within the context of the

law. However, we do not conclude this is fatal to the appeal; therefore, the merits of each issue presented are addressed.

Our scope of review of a trial court's order dismissing condemnee's preliminary objections is limited to determining whether the trial court abused its discretion or committed an error of law. *In re Condemnation of Penn Township,* 702 A.2d 614 (Pa.Cmwlth.1997). In eminent domain proceedings, preliminary objections are the exclusive means of challenging a declaration of taking, and the trial court is required to resolve the preliminary objections promptly, and is required to take evidence only where an issue of fact is raised. Section 406(a), (e) of the Eminent Domain Code, 12 26 P.S. §406(a) and (e).

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12 Section 406(a), (e) of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, Sp.Sess., 26 P.S. § 10406(a), (e) states:

> (a) . . . Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated: (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking.
>
> (e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title . . . If an issue of fact is raised, the court shall take evidence by depositions or otherwise.

The Thorpes (condemnees) allege that the trial court abused its discretion in not allowing discovery and by ignoring important evidence, preventing them form obtaining a fair hearing. We have paged through the voluminous record and can find no support for this contention. Nine days elapsed between the filing of the preliminary objections and the scheduled evidentiary hearing. In that nine-day period, condemnees were required to prepare themselves for the hearing on the preliminary objections they filed. Condemnees fail to point to disputed factual issues and fail to establish what evidence they were precluded from introducing into court. Since condemnees have failed to substantiate the manner in which the trial court abused its discretion, we conclude this issue lacks merit.

Condemnees also contend that the trial court misapplied the law. Since condemnees failed to develop properly this argument in their brief to this Court, we will not act as their advocate and resolve issues not properly presented. There fore, this issue is not reviewed because it had not been adequately briefed to this Court.

JAMES GARNER COLLINS, Judge

Judge Friedman concurs in the result only.

The court may allow amendment or direct the filing of a more specific declaration of taking.

APPENDIX D – ORDER DATED DECEMBER 21, 1999

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: CONDEMNATION BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF ALLENTOWN OF 235 NORTH FIFTH-STREET, CITY OF ALLENTOWN, LEHIGH COUNTRY, PENNSYLVANIA, JOE LARRY THORPE (CONDEMNEE) LINDA D. THORPE (CONDEMNEE)

No. 1595 C.D. 1999

JOE L. THORPE and LINDA D.THORPE,
Appellants

ORDER

AND NOW, this 21st day of December 1999, the order of the Court of Common Pleas of Lehigh County is affirmed.

JAMES GARDNER COLINS, Judge